



DIVISION OF  
TRADING AND MARKETS

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

April 4, 2008.

Stuart M. Strauss, Esq.  
Clifford Chance US LLP  
31 West 52nd Street  
New York, NY 10019

**Re: PowerShares Actively Managed Exchange Traded Fund Trust**  
**File No. TP 08-38**

Dear Mr. Strauss:

In your letter dated April 3, 2008, as supplemented by conversations with the staff of the Division of Trading and Markets ("Division"), PowerShares Actively Managed Exchange Traded Fund ("ETF") Trust (the "Trust") on behalf of itself, the Funds (as defined below), any national securities exchange or national securities association on or through which the exchange traded shares of the Trust ("Shares"), may subsequently trade, and persons or entities engaging in transactions in Shares, requests exemptions from, or interpretive or no-action advice regarding, Section 11(d)(1) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), Rules 10b-10, 10b-17, 11d1-2, 14e-5, 15c1-5 and 15c1-6 under the Exchange Act, and Rules 101 and 102 of Regulation M in connection with secondary market transactions in Shares and the creation or redemption of Creation Units, as discussed in your letter. We have enclosed a photocopy of your letter. Each defined term in this letter has the same meaning as defined in your letter, unless we note otherwise.

The Trust was organized on November 6, 2007, as a Delaware business trust. The Trust is registered with the Commission under the Investment Company Act of 1940, as amended ("1940 Act"), as an open-end management investment company. The Trust currently consists of four separate investment portfolios (each a "Fund" and together the "Funds"). The PowerShares Active AlphaQ Fund and the PowerShares Active Alpha Multi-Cap Fund (the "AER Funds") will each seek to provide long-term capital appreciation by investing, under normal market conditions, at least 95% of its total assets in a diversified portfolio of equity securities with a market capitalization of over \$400 million using a unique stock screening methodology. The PowerShares Active Mega Cap Fund will seek long-term capital growth by investing, normally, at least 80% of its assets in a diversified portfolio of equity securities of mega-capitalization companies using a proprietary quantitative approach (together with the AER Funds, the "Equity Funds"). The PowerShares Active Low Duration Fund (the "Fixed Income fund") will seek to provide total return by investing, normally, at least 80% of its assets in a diversified portfolio of U.S. government and corporate debt securities, with duration of

zero to three years. While the Funds will not seek to track the performance of an underlying index, the Funds will otherwise operate in the same manner as index-based ETFs. In your letter, you also represent the following:

- Shares of each of the Funds will be issued by an open-end management investment company that is registered with the Commission;
- Each of the Funds will continuously redeem, at net asset value ("NAV"), Creation Unit Aggregations of 50,000 Shares, and the secondary market price of the Shares should not vary substantially from the NAV of such Shares;
- Shares of each of the Funds will be listed and traded on an Exchange;
- Each of the Equity Funds will hold 20 or more Portfolio Securities with no one Portfolio Security constituting more than 25% of total value of each Fund;
- At least 70% of each of the Equity Funds will be comprised of Portfolio Securities that meet the minimum public float and minimum average daily trading volume thresholds under the "actively-traded securities" definition found in Regulation M for excepted securities;
- No Portfolio Security (excluding a Treasury Security) held by the Fixed Income Fund will represent more than 30% of the weight of the Fixed Income Fund, and the five highest weighted component securities held by the Fixed Income Fund's portfolio (excluding a Treasury Security) will not in the aggregate account for more than 65% of the weight of the Fixed Income Fund;
- The Fixed Income Fund will be either 100% Treasury Securities or at least a substantial portion of the Fixed Income Fund's assets will be invested in Treasury Securities. The Fixed Income Fund intends to diversify the initially small non-Treasury portion of the Fixed Income Fund's portfolio and, as the Fixed Income Fund continues to grow, it will continue to increase the number of non-affiliated (non-Treasury) issues;
- On each Business Day before commencement of trading in Shares on the Exchange, each Fund will disclose on its website the identities and quantities of the portfolio securities and other assets held by each Fund, which will form the basis for each Fund's calculation of NAV at the end of the Business Day; and
- The Exchange will disseminate every 15 seconds throughout the trading day through the facilities of the Consolidated Tape Association an amount representing on a per Share basis, the sum of the current value of the Deposit Securities and the estimated cost component.

*Response:*

*Regulation M*

Redeemable securities issued by an open-end management investment company are excepted from the provisions of Rule 101 and 102 of Regulation M. The Commission granted the Trust an exemption from certain provisions of the 1940 Act in order to permit the Trust to maintain its registration as an open-end management investment company and to issue shares that are redeemable only in Creation Unit size aggregations of Shares.

*Rule 101 of Regulation M*

Generally, Rule 101 of Regulation M is an anti-manipulation regulation that, subject to certain exceptions, prohibits any “distribution participant” and its “affiliated purchasers” from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security which is the subject of a distribution until after the applicable restricted period except as specifically permitted in the Regulation. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, or other persons who have agreed to participate or are participating in a distribution of securities.

On the basis of your representations and the facts presented, and without necessarily concurring in your analysis, particularly that the Trust is a registered open-end management investment company that will continuously redeem at NAV Creation Unit size aggregations of the Shares of the Funds, and the secondary market price of the Shares of the Funds should not vary substantially from the NAV of such Shares, which is based on the value of the portfolio securities and the other assets held by the Funds, the Division hereby confirms that the Trust is excepted under paragraph (c)(4) of Rule 101 of Regulation M with respect to the Funds thus permitting persons who may be deemed to be participating in a distribution of Shares of the Funds to bid for or purchase such Shares during their participation in such distribution.<sup>1</sup>

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<sup>1</sup> We note that Regulation M does not prohibit a distribution participant and its affiliated purchasers from bidding for and purchasing portfolio securities in accordance with the exceptions contained in paragraphs (b)(6) and (c)(1) of Rule 101. Rule 101(b)(6)(i) excepts basket transactions in which bids or purchases are made in the ordinary course of business in connection with a basket of 20 or more securities in which a covered security does not comprise more than 5% of the value of the basket purchased. Rule 101(b)(6)(ii) excepts adjustments to such a basket made in the ordinary course of business as a result of a change in the composition of a standardized index. Also, Rule 101(c)(1) excepts transactions in actively-traded securities, that is, securities that have an average daily trading volume value of at least \$1 million and are issued by an issuer whose common equity securities have a public float value of at least \$150 million; provided however, that such securities are not issued by the distribution participant or an affiliate of the distribution participant.

The Division also confirms the interpretation of Rule 101 of Regulation M that a redemption of Creation Unit size aggregations of Shares of the Funds and the receipt of Fund Securities in exchange therefor by a participant in a distribution of Shares of the Funds would not constitute an “attempt to induce any person to bid for or purchase a covered security, during the applicable restricted period” within the meaning of Regulation M, and therefore would not violate Regulation M.

*Rule 102 of Regulation M*

Rule 102 of Regulation M prohibits issuers, selling security holders, or any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder. Rule 100 of Regulation M defines “distribution” to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods.

On the basis of your representations and the facts presented, particularly that the Trust is a registered open-end management investment company that will redeem at NAV Creation Units of Shares of the Funds, the Division hereby confirms that the Trust is excepted under paragraph (d)(4) of Rule 102 of Regulation M with respect to the Funds, thus permitting the Funds to redeem Shares of the Funds during the continuous offering of such Shares.

*Rule 14e-5*

Rule 14e-5 under the Exchange Act, among other things, prohibits a person making a tender offer or exchange offer for any equity security from directly or indirectly, purchasing or arranging to purchase any subject or related securities except as part of the offer, from the time the offer is publicly announced until its expiration.

Rule 14e-5 explicitly includes dealer-managers within the rule's definition of “covered person.” Accordingly, while acting as dealer-manager of a tender offer for an equity security, a dealer-manager is prohibited from purchasing or arranging to purchase that equity security until the expiration of the offer.

On the basis of your representations and the facts presented, particularly that purchases or redemptions of Shares of the Funds would not appear to result in the abuses at which Rule 14e-5 is directed, and that any bids or purchases by dealer-managers would not be effected for the purpose of facilitating a tender offer, the Commission hereby grants an exemption from Rule 14e-5 to permit any person acting as dealer-manager of a tender offer for an equity security to: (1) redeem Shares of the Funds in Creation Unit

size aggregations with the Trust for Fund Securities that may include a security subject to the tender offer; and (2) purchase Shares of the Funds during such offer.<sup>2</sup>

*Rule 10b-17*

Rule 10b-17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution, stock split, or rights offering) relating to such class of securities in accordance with Rule 10b-17(b).

On the basis of your representations and the facts presented, and without necessarily concurring in your analysis, particularly that the Commission has determined to grant an exemption from the 1940 Act to register the Trust as an open-end management investment company notwithstanding the fact that it issues Shares with limited redeemability, the Commission hereby grants an exemption from the requirements of Rule 10b-17 to the Trust with respect to transactions in the Shares.<sup>3</sup>

*Section 11(d)(1) and Rules 10b-10, 11d1-2, 15c1-5, and 15c1-6*

As discussed,<sup>4</sup> we are treating your request for relief under Section 11(d)(1) of the Exchange Act, and Rules 10b-10, 11d1-2, 15c1-5, and 15c1-6 thereunder, as a request that the Division confirm that it will not recommend enforcement action to the Commission if a broker-dealer treats Shares of each of the Funds, for purposes of the relief from Section 11(d)(1) and Rules 10b-10, 11d1-2, 15c1-5, and 15c1-6 provided in the Letter re: Derivative Products Committee of the Securities Industry Association (November 21, 2005) ("Class Relief Letter"), as shares of a Qualifying ETF (as defined in the Class Relief Letter).

With respect to the Equity Funds, based on the facts and representations set forth in your letter, and without necessarily agreeing with your analysis, the Division will not recommend enforcement action to the Commission if a broker-dealer treats Shares of the

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<sup>2</sup> The Division also confirms its no-action position under Rule 14e-5 when a broker-dealer, acting as a dealer-manager of a tender offer for a Fund Security, purchases such securities in the secondary market for the purpose of tendering them to purchase a Creation Unit size aggregation of Shares of the Funds, if such transactions are effected as adjustments to such a basket in the ordinary course of business as a result of a change in the composition of a Fund's portfolio and are not effected for the purpose of facilitating such tender offer.

<sup>3</sup> We also note that compliance with Rule 10b-17 would be impractical in light of the nature of the Funds. This is because it is not possible for the Trust to accurately project ten days in advance what dividend, if any, would be paid on a particular record date.

<sup>4</sup> Telephone conversation among Matthew A. Daigler and Darren Vieira, Division of Trading and Markets, Commission and Stuart Strauss, Esq., on March 12, 2008.

Equity Funds, for purposes of the relief from Section 11(d)(1) of the Exchange Act and Rules 10b-10, 11d1-2, 15c1-5, and 15c1-6 thereunder provided in the Class Relief Letter, as shares of a Qualifying ETF, notwithstanding the fact that the Equity Funds will not be managed to track a particular index, provided that the Equity Funds meet all of the other conditions of a Qualifying ETF. Accordingly with respect to Shares of the Equity Funds, to the extent that a broker-dealer satisfies the other conditions in the Class Relief Letter, it could rely on the exemptive and no-action relief contained therein.

With respect to the Fixed Income Fund, based on the facts and representations set forth in your letter, in particular, the nature of the assets in the Fixed Income Fund, and without necessarily agreeing with your analysis, the Division will not recommend enforcement action to the Commission if a broker-dealer treats Shares of the Fixed Income Fund, for purposes of the relief from Section 11(d)(1) of the Exchange Act and Rules 10b-10, 11d1-2, 15c1-5, and 15c1-6 thereunder provided in the Class Relief Letter, as shares of a Qualifying ETF. Accordingly with respect to Shares of the Fixed Income Fund, to the extent that a broker-dealer satisfies the other conditions in the Class Relief Letter, it could rely on the exemptive and no-action relief contained therein.

The foregoing exemptions from Rules 14e-5 and 10b-17 under the Exchange Act, the interpretive advice regarding Rules 101 and 102 of Regulation M, and no-action positions taken under Section 11(d)(1) of the Exchange Act, and Rules 10b-10, 11d1-2, 15c1-5, and 15c1-6 thereunder, are based solely on your representations and the facts presented to the Division, and are strictly limited to the application of those rules to transactions involving the Shares of the Funds under the circumstances described above and in your letter. Such transactions should be discontinued, pending presentation of the facts for our consideration, in the event that any material change occurs with respect to any of those facts or representations. Moreover, the foregoing exemptions from Rules 14e-5 and 10b-17 under the Exchange Act, and the interpretive advice regarding Rules 101 and 102 of Regulation M, are subject to the condition that such transactions in Shares of the Funds, Portfolio Security, or any related securities are not made for the purpose of creating actual, or apparent, active trading in or raising or otherwise affecting the price of such securities.

These exemptions, interpretations, and no-action positions are subject to modification or revocation if at any time the Commission or Division determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, persons relying on these exemptions, interpretations, and no-action positions are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a), 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and other provisions of the federal or state securities laws must rest with persons relying on these exemptions, interpretations, and no-action positions.

Stuart M. Strauss, Esq.  
Clifford Chance US LLP  
April 4, 2008  
Page 7 of 7

The Division expresses no view with respect to other questions that the proposed transactions may raise, including, but not limited to, the adequacy of disclosure concerning, and the applicability of other federal and state laws to, the proposed transactions.

For the Commission, by the Division of  
Trading and Markets,  
pursuant to delegated authority,

A handwritten signature in black ink, reading "James A. Brigagliano". The signature is written in a cursive, flowing style.

James A. Brigagliano  
Associate Director

Attachment

**Stuart M. Strauss**  
Partner

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April 3, 2008

Mr. James A. Brigagliano  
Ms. Paula R. Jenson  
Division of Trading and Markets  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

Re: Exemptive, Interpretive or No-Action Relief from Section 11(d)(1) of the Securities Exchange Act of 1934 and Rules 10b-10; 10b-17; 11d1-2; 14e-5; 15c1-5; and 15c1-6; Rules 101 and 102 of Regulation M promulgated under the Securities Exchange Act of 1934.

Dear Mr. Brigaliano and Ms. Jenson:

PowerShares Actively Managed Exchange Traded Fund Trust (the "Trust") is an open-end management investment company organized on November 6, 2007 as a Delaware business trust. The Trust is currently comprised of four Portfolios (each a "Fund" and together the "Funds").

The Trust on behalf of itself, the Funds, and any national securities exchange or national securities association on or through which the shares subsequently trade (with each such market being an "Exchange"), and persons or entities engaging in transactions in shares issued by a Fund ("Shares"), as the case may be, requests that the Securities and Exchange Commission (the "Commission" or the "SEC") grant exemptive, interpretive or no-action relief from Section 11(d)(1) of the Securities

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James A. Brigalano  
Paula R. Jenson  
April 3, 2008  
Page 2

Exchange Act of 1934 (the "Exchange Act"), Rules 10b-10, 10b-17, 11d1-2, 14e-5, 15c1-5 and 15c1-6 under the Exchange Act and Rules 101 and 102 of Regulation M in connection with secondary market transactions in Shares and the creation or redemption of Creation Units, as discussed below.

The Trust will issue and redeem Shares in aggregations of 50,000 (a "Creation Unit"). The Trust has filed a registration statement on Form N-1A and will apply to have its shares listed on an Exchange. The Trust will offer the following Funds: The PowerShares Active AlphaQ Fund, the PowerShares Active Alpha Multi-Cap Fund, the PowerShares Active Mega Cap Fund and the PowerShares Active Low Duration Fund. The Trust is overseen by a board of trustees (the "Board") which will maintain the composition requirements of Section 10 of the 1940 Act. Each Fund will adopt fundamental policies consistent with the 1940 Act and be classified as "diversified" or "non-diversified" under the 1940 Act. Each Fund intends to maintain the required level of diversification, and otherwise conduct its operations, so as to meet the regulated investment company ("RIC") diversification requirements of the Internal Revenue Code of 1986, as amended (the "Code").

The SEC Staff has previously issued relief identical to that requested herein to index based exchange-traded funds ("ETFs") listed and traded on a national securities exchange which meet certain conditions.<sup>1</sup> The Trust is not an index-based ETF and therefore is not entitled to rely on such relief.

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<sup>1</sup> See Letter from James A. Brigalano regarding Class Relief for Fixed Income Exchange Traded Index Funds, dated April 9, 2007; (the "Fixed Income ETF Class Letter"); Letter from James A. Brigalano to a PowerShares Exchange Traded Fund Trust regarding Class Relief for Exchange Traded Index Funds dated October 24, 2006 (the "Equity ETF Class Relief Letter"); Letter from Catherine McGuire, Esq., Chief Counsel Division of Market Regulation to the Securities Industry Association Derivative Products Committee, dated November 21, 2005 (the "SIA" Letter); Letter from James A. Brigalano, (continued...)

James A. Brigalano  
Paula R. Jenson  
April 3, 2008  
Page 3

The Trust, nevertheless, notes that its proposal—the creation and issuance by an investment company of shares that individually trade on an Exchange, but that in large aggregations can be purchased from and redeemed with the issuing investment company—is no longer novel. The Commission has in the past thirteen years considered and approved many proposals similar to this proposal. Some of these products have been trading publicly for years, and the Trust is not aware of any abuses associated with them. Indeed, several of the products have been so embraced by investors that they are routinely among the highest volume securities on the exchanges on which they trade.<sup>2</sup>

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(continued...)

Assistant Director, Division of Market Regulation to Claire P. McGrath, Vice President and Special Counsel, American Stock Exchange LLC, dated August 17, 2001.

<sup>2</sup> The SEC has previously granted exemptive or no-action relief under Rules 10a-1; 10b-6; 10b-7; 10b-10; 10b-13; 10b-17; 11d1-2; 15c1-5; 15c1-6 and Regulation M under the Exchange Act similar to that requested here. See *e.g.*, Letter from Nancy Sanow, Assistant Director, Division of Market Regulation to James Duffy, Senior Vice President and General Counsel, AMEX, dated January 22, 1993 with respect to trading of SPDR Trust, Series 1; Letter from Nancy Sanow, Assistant Director, Division of Market Regulation to James Duffy, Senior Vice President and General Counsel, AMEX, dated April 21, 1995 with respect to trading of MidCap SPDR Trust; Letters from Larry E. Bergman, Senior Associate Director, Division of Market Regulation to Stuart M. Strauss, Gordon Altman Butowsky, dated December 14, 1998 and December 22, 1998, respecting the trading of the Select Sector SPDR Trust; Letter from James Brigalano, Assistant Director, Division of Market Regulation to James Duffy, Senior Vice President and General Counsel, AMEX, dated March 3, 1999 with respect to the trading of the Nasdaq 100 Trust Letter from James Brigalano, Assistant Director, Division of Market Regulation to Kathleen Moriarty, Carter, Ledyard & Milburn dated May 16, 2000 with respect to the trading of the iShares Trust; Letter from James Brigalano, Assistant Director, Division of Market Regulation, to Stuart Strauss, Mayer, Brown & Platt dated September 26, 2000 with respect to the trading of the streetTRACKS® Series Trust; Letter from James Brigalano, Assistant Director, Division of Market Regulation to W. John McGuire, Morgan, Lewis & Bockius LLP dated July 25, 2002 with respect to the trading of various series funds of the iShares Trust; Letter from James Brigalano, Assistant Director, Division of Market Regulation, to Stuart Strauss, Mayer, Brown Rowe & Maw dated October 21, 2002 with respect to the trading of the Fresco<sup>SM</sup> Index Shares Fund; Letter from James Brigalano, Assistant Director, Division of Market Regulation to Jack P. Drogin, Morgan, Lewis & Bockius LLP dated September 25, 2003 with respect to the trading of the iShares Lehman  
(continued...)

The Trust differs from previous index-based ETFs to the extent that each Fund is “actively managed.” As discussed below, however, each Fund’s portfolio will be fully transparent thereby permitting arbitrage activity to the same extent as index-based ETFs. In all other material respects, the Trust will operate in the same manner as other ETFs. Therefore, while the Funds are actively managed, we do not believe that the Funds raise any significant new regulatory issues.

### **The Initial Funds and Their Investment Objectives**

1. *The AER Funds.* The PowerShares Active AlphaQ Fund and the PowerShares Active Alpha Multi-Cap Fund (the “AER Funds”) will be sub-advised by AER Advisors, Inc. (“AER”).

The AER Funds will each seek to provide long-term capital appreciation by investing, under normal market conditions, at least 95% of its total assets in stocks with a market capitalization of over \$400 million that are traded in the United States.

AER will employ its unique stock screening methodology in the management of the Funds. In employing its methodology, the Sub-Adviser tracks and rates all U.S. stocks of companies with over a \$400 million market capitalization and listed on a national securities exchange. The Sub-Adviser does not track or rate securities traded on foreign exchanges. On a weekly basis, the Sub-Adviser generates its master stock list (“Master Stock List”) which ranks the universe of over 3,000 stocks based on its proprietary “NOW” rating, segmented by market capitalization categories. Certain of those stocks may be American Depositary Receipts (“ADRs”). However, it is anticipated by the Sub-Adviser that

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U.S. Treasury Inflation Protected Securities Fund and the iShares Lehman U.S. Aggregate Bond Fund (each a series of the iShares Trust).

James A. Brigaliano  
Paula R. Jenson  
April 3, 2008  
Page 5

less than 3% of all securities in the Master Stock List will be American Depositary Receipts (“ADRs”) and that ADRs will not represent more than 3% of any one AER Fund. In its management of each AER Fund, AER expects to use the 2,000 largest stocks by market capitalization from the Master Stock List as the universe for the PowerShares Active Multi-Cap Fund and the 100 largest Nasdaq-listed on the Nasdaq Global Market for the PowerShares Active AlphaQ Fund. Each of the stocks on the Master List is traded on an Exchange and is considered by the Sub-Adviser to be highly liquid. It is expected that each AER Fund will be comprised of 50 stocks.

Each week, on the last day on which the Funds are open for business, which includes any day that the Fund is required by Section 22(e) of the Investment Company Act of 1940, as amended (“1940 Act”) to be open for business (“Business Day”), AER will review the applicable universe based on its proprietary “NOW” ranking generally to maintain each Fund’s portfolio securities (“Portfolio Securities”) in the highest-ranking stocks in the Master Stock List. If a Portfolio Security drops below a 60% “NOW” rank, AER, in its discretion may replace it with a new security. Each week, AER may replace up to 3 securities in the portfolio of each AER Fund. AER will replace those securities with the highest “NOW” ranked stocks (“Replacement Securities”). At the initiation of the AER Funds, their Portfolio Securities will be approximately equally weighted (i.e., 2% for each stock in the case of the PowerShares Active AlphaQ and PowerShares Active Alpha Multi-Cap Funds). In connection with the weekly review, AER will reduce a holding to the initial equal weight when the position reaches 3.0%. Proceeds from the securities sold will be invested in equal dollar amounts in the Replacement Securities for that week. It is currently anticipated that Replacement Securities will be limited to stocks that are not current Portfolio Securities. Purchase and sale transactions necessary

James A. Brigaliano  
Paula R. Jenson  
April 3, 2008  
Page 6

to implement changes in each AER Fund's Portfolio Securities will be effected on the last Business Day of each week.

Each AER Fund will hold twenty or more Portfolio Securities with no one Portfolio Security constituting more than 25% of the total value of each Fund, and at least 70% of each AER Fund will be comprised of Portfolio Securities that meet the minimum public float and minimum average daily trading volume thresholds under the "actively traded securities" definition found in Regulation M for excepted Securities.

2. *The Invesco Funds.* The PowerShares Active Mega Cap Fund and the PowerShares Active Low Duration Fund (the "Invesco Funds") will be sub-advised by Invesco Institutional N.A. Inc. ("Invesco").

The PowerShares Active Mega Cap Fund's investment objective is long-term growth of capital. The PowerShares Active Mega Cap Fund seeks to meet its objective by investing, normally, at least 80% of its assets in a diversified portfolio of equity securities of mega-capitalization companies. The principal type of equity securities purchased by the Fund is common stock.

The PowerShares Active Mega Cap Fund may also invest in derivative instruments such as futures contracts and equity linked derivatives. In managing the Fund, Invesco, the Fund Sub-Adviser, uses a quantitative approach to evaluate fundamental and technical factors with a view towards forecasting individual security returns and will apply proprietary and non-proprietary risk and transaction cost models to forecast individual security risk and transaction costs. Invesco incorporates

James A. Brigaliano  
Paula R. Jenson  
April 3, 2008  
Page 7

these individual security forecasts, using a proprietary program in seeking to construct the optimal portfolio holdings and further manage risk.

The PowerShares Active Mega Cap Fund will hold twenty or more Portfolio Securities with no one Portfolio Security constituting more than 25% of the total value of the Fund, and at least 70% of the Fund will be comprised of Portfolio Securities that meet the minimum public float and minimum average daily trading volume thresholds under the actively traded securities definition found in Regulation M for excepted securities.

The PowerShares Active Low Duration Fund's investment objective is to provide total return. The PowerShares Active Low Duration Fund seeks to meet its objective by investing, normally, at least 80% of its assets in a portfolio of U.S. government, corporate and agency debt securities. The PowerShares Active Low Duration Fund may invest in structured securitized debt securities, such as asset-backed securities and both residential and commercial mortgage-backed securities, and the Fund's investments may include investments in derivative instruments. Derivative instruments that the Fund may invest in include, but are not limited to, swaps, including interest rate, total return and credit default swaps, put options, call options and futures contracts and options on futures contracts. The Fund may also utilize other strategies such as dollar rolls and reverse repurchase agreements. The Fund may invest up to 25% of its total assets in non-investment grade securities ("junk bonds"). Under normal market conditions the PowerShares Active Low Duration Fund's effective duration, as estimated by Invesco, will be in the range of zero to three years.

No Portfolio Security (excluding a Treasury Security) will represent more than 30% of the weight of the PowerShares Active Low Duration Fund and the five highest weighted component

James A. Brigaliano  
Paula R. Jenson  
April 3, 2008  
Page 8

securities (excluding a Treasury Security) will not in the aggregate account for more than 65% of the weight of the PowerShares Active Low Duration Fund. The Fund's benchmark is a 1-3 year Treasury index, so it is expected that the Fund will be either 100% U.S. Treasuries or at least a substantial portion of the Fund's assets will be invested in U.S. Treasuries. The Fund intends to diversify the initially small non-treasury portion of the Fund's portfolio and, as the Fund continues to grow, it will continue to increase the number of non-affiliated (non-treasury) issues.

#### **Availability of Information**

On each Business Day, before commencement of trading in Shares on the Exchange, each Fund will disclose on its website the identities and quantities of the securities and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day. The website and information will be publicly available at no charge. See also "Sales of Fund Shares" below describing the daily disclosure of Deposit Securities and "Calculation of Intra Day NAV" at page 23.

#### **Sales of Fund Shares**

AIM Distributors, Inc., a registered broker dealer under the Exchange Act and member of the Financial Industry Regulatory Authority, (the "Distributor") acts on an agency basis and is each Fund's "principal underwriter" as defined in Section 2(a)(29) of the 1940. Each Fund will sell Shares to investors only in Creation Units through the Distributor on a continuous basis at the NAV per share next determined after an order in proper form is received. In order to keep costs at a low level and permit each Fund to be as fully invested as possible, Shares generally will be purchased in Creation Units in exchange for the deposit, by the purchaser, of a particular portfolio of securities, ("Deposit

James A. Brigaliano  
Paula R. Jenson  
April 3, 2008  
Page 9

Securities”), designated by the Adviser, or Sub-Adviser, together with the deposit or refund of a specified cash payment as the case may be (“Cash Component”—collectively with the Deposit Securities, a “Fund Deposit”). Each Fund will issue and sell Shares on any Business Day. The NAV of each Fund will normally be determined as of the close of the regular trading session on the New York Stock Exchange, Inc. (“NYSE”) (ordinarily 4:00 p.m., Eastern time) on each Business Day.

The Applicants expect that the Deposit Securities will consist of a pro rata basket of the Funds’ portfolio<sup>3</sup>. The Cash Component will be equal to the difference, if any, between the NAV per Creation Unit and the market value per Creation Unit of the Deposit Securities. The PowerShares Active Low Duration Fund also intends to substitute a cash-in-lieu amount to replace any Deposit Security or Fund Security (as defined on page 17) of a Fund that is a “to-be-announced transaction” or “TBA Transaction.” A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date. The amount of substituted cash in the case of TBA Transactions will be equivalent to the value of the TBA Transaction listed as a Deposit Security or Fund Security.<sup>4</sup>

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<sup>3</sup> In the case of the PowerShares Active Low Duration Fund, because it is often impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement, there may be minor differences between a basket of Deposit Securities or Fund Securities and a true pro rata slice of the Fund’s portfolio.

<sup>4</sup> Applicants expect that a cash-in-lieu amount would replace any TBA Transaction that is listed as a Deposit Security or Fund Security of the Fund.

James A. Brigaliano  
Paula R. Jenson  
April 3, 2008  
Page 10

The Funds' "in-kind" policy will minimize portfolio turnover and brokerage expenses. However, over time, the Trust may conclude that operating on an exclusively "in-kind" basis for one or more Funds may present operational problems for such Funds. Those circumstances may include situations when a Deposit Security may not be available in sufficient quantity for delivery or may not be eligible for transfer through the Shares Clearing Process (defined below), or may not be eligible for trading by an Authorized Participant (defined below) or the investor for which it is acting. Therefore, each Fund may permit or require, under certain circumstances, an in-kind purchaser to substitute cash in lieu of depositing some or all of the Deposit Securities.

In order for the Trust to preserve maximum efficiency and flexibility, the Trust reserves the right to determine in the future that Shares of one or more of the Funds may be purchased in Creation Units on a cash-only basis. The decision to permit cash-only purchases of Creation Units, to the extent made at all in the future, would be made if the Trust and the Adviser believed such method would substantially minimize the Trust's transactional costs or would enhance the Trust's operational efficiencies. For example, on days when a rebalancing of a Fund's portfolio is required, the Adviser might prefer to receive cash rather than in-kind stocks so that it has the liquid resources at hand for the Trust to make the necessary purchases. If a Fund were to receive in-kind stocks on such a day, it would have to sell many of such stocks and acquire new stocks, thus incurring transaction costs which could have been avoided (or at least minimized) if the Fund had received payment for the Creation Units in cash.

James A. Brigaliano  
Paula R. Jenson  
April 3, 2008  
Page 11

In order to defray the transaction expenses, including brokerage costs, that will be incurred by a Fund when investors purchase or redeem Creation Units, each Fund will impose purchase or redemption transaction fees (“Transaction Fees”) to be borne only by such purchasers or redeemers. Where a Fund permits an in-kind purchaser to substitute cash-in-lieu of depositing a portion of the Deposit Securities, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing those securities. The exact amounts of such Transaction Fees will be determined separately for each Fund. The Transaction Fee is designed to protect the continuing shareholders of a Fund against the dilutive costs associated with the transfer or purchase of Portfolio Securities in connection with the purchase of Creation Units and with the transfer or sale of Portfolio Securities in connection with the redemption of Creation Units. The Transaction Fees relevant to each Fund will be fully disclosed in the Fund’s prospectus (“Prospectus”) and the method of calculating these Transaction Fees will be fully disclosed in the statement of additional information (“SAI”) of such Fund. Transaction Fees will be limited to amounts that have been determined by the Adviser to be appropriate and will take into account transaction costs associated with the relevant Deposit Securities of the Funds. In all cases, such Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities.

Creation Units will be aggregations of at least 50,000 Shares. The Applicants recognize that each Share is issued by an investment company and, accordingly, the acquisition of any Shares by an investment company, whether acquired from the Fund or in the secondary market, shall be subject to

James A. Brigaliano  
Paula R. Jenson  
April 3, 2008  
Page 12

the restrictions of Section 12(d)(1) of the 1940 Act except as permitted by an exemptive order that permits investment companies to invest in a Fund beyond those limitations.

The Funds' Custodian, in consultation with the Adviser and/or the Fund Sub-Adviser, will, through the facilities of the National Securities Clearing Corporation (the "NSCC"), make available on each Business Day, immediately prior to the opening of trading on the Exchange, a list of the names and the required number of shares of each Deposit Security included in the current Fund Deposit (based on information at the end of the previous Business Day) for the relevant Fund. Such Fund Deposit will be applicable, subject to any adjustments as described below, in order to effect purchases of Creation Units of a given Fund until such time as the next-announced Fund Deposit composition is made available. In the same manner, the Custodian also will make available the previous day's Cash Component as well as the estimated Cash Component for the current day.

Creation Units may be purchased through orders placed by the Distributor through an "Authorized Participant" which is either (1) a "Participating Party," *i.e.*, a broker-dealer or other participant in the Shares Clearing Process through the Continuous Net Settlement System of the NSCC, a clearing agency that is registered with the Commission, or (2) a DTC Participant, which in either case has executed an agreement with the Trust, the Distributor and the Transfer Agent, with respect to creations and redemptions of Creation Units ("Participant Agreement"). An investor does not have to be an Authorized Participant, but must place an order through, and make appropriate arrangements with, an Authorized Participant. The Distributor will be responsible for transmitting orders to the Funds. In the case of the AER Funds and the PowerShares Active Mega Cap Fund (the

James A. Brigaliano  
Paula R. Jenson  
April 3, 2008  
Page 13

“Equity Funds”), Authorized Participants making payment for Creation Units placed through the Distributor must either (1) initiate instructions through the Continuous Net Settlement System of the NSCC as such processes have been enhanced to effect purchases and redemptions of Creation Units (the “Shares Clearing Process”) or (2) deposit the Fund Deposit with the Trust “outside” the Shares Clearing Process through the facilities of DTC as described in the SAI. In the case of the PowerShares Active Low Duration Fund, Authorized Participants must follow the creation procedures specified in the section below entitled “Settlement and Clearing of Fixed Income Funds.”

All standard orders to create a Creation Unit must be received by the Distributor no later than the close of the regular trading session on the NYSE (ordinarily 4:00 p.m., Eastern time) (the “Closing Time”) on the date such order is placed, as described in the Participant Agreement, in order for creation of Creation Units to be effected based on the NAV of Shares, as next determined on such date. In the case of custom orders,<sup>5</sup> the order must be received by the Distributor no later than one hour prior to Closing Time. The Distributor may reject any order to purchase Shares that is not

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<sup>5</sup> A custom order may be placed by an Authorized Participant in the event that the Trust permits or requires the substitution of an amount of cash to be added to the Cash Component to replace any Deposit Security which may not be available in sufficient quantity for delivery or which may not be eligible for trading by such Authorized Participant or the investor for which it is acting. On days when the Exchange or bond markets close earlier than normal, the PowerShares Active Low Duration Fund may require custom orders for Creation Units to be placed earlier in the day. For example, on days when the generally accepted close of the bond market occurs earlier than normal (such as the day before a holiday), the order cut-off time for custom orders is expected to be no later than 11:00 a.m., Eastern time. In addition, orders to purchase shares of the PowerShares Active Low Duration Fund will not be accepted on any day when the bond markets are closed.

James A. Brigalano  
Paula R. Jenson  
April 3, 2008  
Page 14

submitted in proper form. In addition, a Fund may reject a purchase order transmitted to it by the Distributor if (1) the purchaser or group of purchasers, upon obtaining the Shares ordered, would own 80% or more of the outstanding Shares of such Fund; (2) the required Fund Deposit is not delivered; (3) the acceptance of the Fund Deposit would have certain adverse tax consequences, such as causing the Fund to no longer meet the requirements of a RIC under the Code; (4) the acceptance of the Fund Deposit would, in the opinion of the Trust, be unlawful, as in the case of a purchaser who was banned from trading in securities; (5) the acceptance of the Fund Deposit would otherwise, in the discretion of the Trust or the Distributor, have an adverse effect on the Trust or the rights of beneficial owners; or (6) there exist circumstances outside the control of the Fund that make it impossible to process purchases of Shares for all practical purposes. Examples of such circumstances include: acts of God or public service or utility problems such as fires, floods, extreme weather conditions and power outages resulting in telephone, telecopy and computer failures; market conditions or activities causing trading halts; systems failures involving computer or other information systems affecting the Fund, the Adviser, the Distributor, the Custodian, NSCC or any other participant in the purchase process, and similar extraordinary events.

The Distributor will issue or cause the issuance of confirmations of acceptance, and will be responsible for delivering a Prospectus to those persons purchasing Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

1. *Creation Procedures Applicable to Equity Funds.* An entity purchasing Creation Units may use the Shares Clearing Process which has been designed to provide trade instructions and

James A. Brigaliano  
Paula R. Jenson  
April 3, 2008  
Page 15

the transfer of the requisite Fund Deposit to the Trust, along with the appropriate Transaction Fee. Upon the deposit of such Fund Deposit in payment for such Creation Units placed through the Distributor, such Shares will be delivered to the purchaser thereof.

An entity purchasing Creation Units “outside” the Shares Clearing Process will be using a manual line-by-line position movement of each Deposit Security and hence will be required to pay a higher Transaction Fee than would have been charged had the creation been effected through the Shares Clearing Process. The higher Transaction Fee will be disclosed in the Prospectus and calculated in the manner disclosed in the SAI. Upon the deposit of the requisite Fund Deposits in payment for Creation Units placed through the Distributor, such Creation Units will be delivered to the purchasers thereof.

Subject to the conditions that (i) a properly completed irrevocable purchase order has been submitted by the Authorized Participant (either on its own or another investor’s behalf) not later than the Closing Time on the date such request is submitted, and (ii) arrangements satisfactory to the Trust are in place for payment of the Cash Component and any other cash amounts which may be due, the Trust will accept the order, subject to its right (and the right of the Adviser) to reject any not submitted in proper form.

Once the Trust has accepted an order, upon the next determination of the NAV per Share of the relevant Fund, the Trust will confirm the issuance, against receipt of payment, of a Creation Unit

James A. Brigaliano  
Paula R. Jenson  
April 3, 2008  
Page 16

at such NAV per Share. The Distributor will then transmit a confirmation of acceptance to the Authorized Participant that placed the order.

Upon the deposit of a Fund Deposit in payment for a Creation Unit, Shares in a Creation Unit will be delivered to the purchaser.<sup>6</sup> When the Custodian has confirmed that the required securities included in the Fund Deposit (or the cash value thereof) have been delivered to the Custodian, the Custodian shall notify the Distributor, and the Trust will issue and cause delivery of the Creation Unit of a Fund.

2. *Creation Procedures Applicable to PowerShares Active Low Duration Fund.* See the section below entitled “Settlement and Clearing of PowerShares Active Low Duration Fund” for the creation procedures applicable to the PowerShares Active Low Duration Fund.

### **Distributor**

The Distributor will not distribute Shares in less than Creation Units, and it will not maintain a secondary market in the Shares. The Distributor may enter into selected dealer agreements with other

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<sup>6</sup> To the extent contemplated by a Participant Agreement, Creation Units will be issued to such Authorized Participant notwithstanding the fact that the corresponding Fund Deposits have not been received in part or in whole, in reliance on the undertaking of the Authorized Participant to deliver the missing Deposit Securities as soon as possible, which undertaking shall be secured by such Authorized Participant’s delivery and maintenance of collateral consisting of cash in the form of U.S. dollars in immediately available funds (marked-to-market daily) up to 125% of the value of the missing Deposit Securities. The Participant Agreement will permit the Fund to buy the missing Deposit Securities at any time and will subject the Authorized Participant to liability for any shortfall between the cost to the Trust of acquiring such Deposit Securities and the value of the collateral. The SAI may contain further details relating to such collateral procedures.

James A. Brigaliano  
Paula R. Jenson  
April 3, 2008  
Page 17

broker-dealers or other qualified financial institutions for the sale of Creation Units of Shares ("Soliciting Dealers"). Such Soliciting Dealers may also be a participant in DTC. The Fund does not have a 12b-1 Plan.

### **Redemption of Shares**

Beneficial owners of Shares must accumulate enough Shares to constitute a Creation Unit in order to redeem through a Fund. Creation Units will be redeemable at the NAV next determined after receipt of a request for redemption by a Fund. Shares generally will be redeemed in Creation Units in exchange for a particular portfolio of securities ("Fund Securities").<sup>7</sup> The Trust will redeem Shares of each Fund on any Business Day. Consistent with the provisions of Section 22(e) of the 1940 Act and Rule 22e-2 under the Act, the right to redeem will not be suspended, nor payment upon redemption delayed, except as provided by Section 22(e) of the 1940 Act. Redemption requests must be received by 4:00 p.m., Eastern Time to be redeemed that day. In the case of custom redemptions<sup>8</sup> the order

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<sup>7</sup> A Fund will comply with the federal securities laws in accepting Deposit Securities and satisfying redemptions with Fund Securities, including that the Deposit Securities and Fund Securities are sold in transactions that would be exempt from registration under the Securities Act. In accepting Deposit Securities and satisfying redemptions with Fund Securities that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Fund will comply with the conditions of Rule 144A, including in satisfying redemptions with such Rule 144A eligible restricted Fund Securities. The prospectus for a Fund will also state that "An Authorized Participant that is not a Qualified Institutional Buyer ("QIB") as defined in Rule 144A under the Securities Act of 1933 will not be able to receive, as part of a redemption, restricted securities eligible for resale under Rule 144A."

<sup>8</sup> Custom redemption orders may be placed by an Authorized Participant in the event that the Trust permits or requires the substitution of an amount of cash to replace any Fund Securities which may not be eligible for trading by such Authorized Participant or the investor for which it is effecting the transaction.

James A. Brigaliano  
Paula R. Jenson  
April 3, 2008  
Page 18

must be received by the Distributor no later than 3:00 p.m., Eastern time. The Trust's Custodian, through the NSCC, will make available immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern time) on each Business Day, the list of Deposit Securities (the "Creation List") which will be applicable to a purchase and the list of Fund Securities (the "Redemption List") that will be applicable (each subject to possible amendment or correction in light of an administrative error in compiling the Creation or Redemption List) to redemption requests received in proper form on that day. In some instances, the Creation List may differ slightly from the Redemption List. The Creation List and the Redemption List may differ in order to assist the Adviser in rebalancing a Fund or as the result of corporate actions.

Each Fund will have the right to make redemption payments in cash, in-kind or a combination of each, provided the value of its redemption payments equals the NAV per Share. At the discretion of the Fund, a beneficial owner might also receive the cash equivalent of a Fund Security upon request because, for instance, it was restrained by regulation or policy from transacting in the securities perhaps because of another transaction with or for the issuer of those securities. A specific example might be the presence of the securities on an investment banking firm's restricted list. The Applicants currently contemplate that, unless cash redemptions are available or specified for a Fund, the redemption proceeds for a Creation Unit generally will consist of Fund Securities plus or minus a "Cash Redemption Amount" as the case may be (collectively, a "Fund Redemption"). The Cash Redemption Amount is cash in an amount equal to the difference between the NAV of the Shares being redeemed and the market value of the Fund Securities. A redeeming investor will pay a Transaction Fee calculated in the same manner as a Transaction Fee payable in connection with the

purchase of a Creation Unit. To the extent that any amounts payable to a Fund by the redeeming investor exceed the amount of the Cash Redemption Amount, the investor will be required to deliver payment to the Fund.

*1. Redemption Procedures Applicable to Equity Funds.* Creation Units may be redeemed through the Shares Clearing Process. Procedures for such redemptions are analogous (in reverse) to those for purchases through the Shares Clearing Process, except that redemption requests are made directly to a Fund through the Trust's Transfer Agent, and are not made through the Distributor. Creation Units may also be redeemed outside the Shares Clearing Process, however, a higher Transaction Fee will be charged.<sup>9</sup> As discussed above, a redeemer will pay a Transaction Fee to offset the Fund's trading costs, operation processing costs, brokerage commissions and other similar costs incurred in transferring the Fund Securities from its account to the account of the

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<sup>9</sup> To the extent contemplated by the Participant Agreement, in the event the Authorized Participant has submitted a redemption request in proper form and is unable to transfer all or part of the Creation Unit to be redeemed to the Transfer Agent, on behalf of the Fund, at or prior to Closing Time of the regular trading session on the NYSE on the date such redemption request is submitted, the Transfer Agent will nonetheless accept the redemption request in reliance on the undertaking by the Authorized Participant to deliver the missing Shares as soon as possible, which undertaking shall be secured by the Authorized Participant's delivery and maintenance of collateral consisting of cash having a value (marked-to-market daily) up to 125% of the value of the missing Shares. The current procedures for collateralization of missing Shares require, among other things, that any cash collateral shall be in the form of U.S. dollars in immediately-available funds and shall be held by the Funds' custodian and marked-to-market daily, and that the fees of the custodian and any sub-custodians in respect of the delivery, maintenance and redelivery of the cash collateral shall be payable by the Authorized Participant. The Participant Agreement will permit the Trust, on behalf of the affected Fund, to purchase the missing Shares at any time and will subject the Authorized Participant to liability for any shortfall between the cost to the Trust of acquiring such Shares and the value of the collateral. The SAI may contain further details relating to such collateral procedures.

James A. Brigaliano  
Paula R. Jenson  
April 3, 2008  
Page 20

redeeming investor. An entity redeeming Shares “outside” the Shares Clearing Process may be required to pay a higher Transaction Fee than would have been charged had the redemption been effected through the Shares Clearing Process. A redeemer receiving cash-in-lieu of one or more Fund Securities may also be assessed a higher Transaction Fee on the cash in lieu portion to cover the costs of selling such securities, including all the costs listed above plus all or part of the spread between the expected bid and offer side of the market relating to such Fund Securities. This higher Transaction Fee will be assessed in the same manner as the Transaction Fee incurred in purchasing Creation Units using a cash-in-lieu portion as described above and will be calculated in the manner as disclosed in the Fund’s Prospectus and/or SAI.

A redemption request outside the Shares Clearing Process will be considered to be in proper form if, (i) a duly completed request form is received by the Transfer Agent from the Authorized Participant on behalf of itself or another redeeming investor at a time specified by the Trust, and (ii) arrangements satisfactory to the Trust are in place for the Authorized Participant to transfer or cause to be transferred to the Trust the Creation Unit being redeemed through the book-entry system of the DTC on or before contractual settlement of the redemption request. As discussed above, in certain circumstances, each Fund in its discretion may require or permit cash to be substituted for a Fund Security.

2. *Redemption Procedures Applicable to the PowerShares Active Low Duration Fund.*

See the section below entitled “Settlement and Clearing of Fixed Income Funds” for the redemption procedures applicable to the PowerShares Active Low Duration Fund.

James A. Brigaliano  
Paula R. Jenson  
April 3, 2008  
Page 21

*Settlement and Clearing of the PowerShares Active Low Duration Fund.* The Deposit Securities and Fund Securities of the PowerShares Active Low Duration Fund will settle via free delivery through the Federal Reserve System for U.S. government securities and cash; and through DTC for U.S. corporate and non-corporate (other than U.S. government) fixed income securities. The Shares will settle through DTC. The Custodian will monitor the movement of the Deposit Securities and will instruct the movement of the Shares only upon validation that the Deposit Securities have settled correctly or that required collateral is in place.

DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC participants. Shares will be registered in book-entry form only, which records will be kept by DTC.

As with the settlement of Equity Fund transactions outside of the NSCC Continuous Net Settlement System (the "CNS System"), (i) Shares of the PowerShares Active Low Duration Fund and U.S. corporate and non-corporate bonds (other than U.S. government securities) will clear and settle through DTC and, (ii) U.S. government securities and cash will clear and settle through the Federal Reserve System. Once the Custodian has verified the receipt of all the Deposit Securities (or in the case of failed delivery of one or more bonds, collateral in the amount of 105% or more of the missing Deposit Securities, which will be marked-to-market each day the failed delivery remains undelivered.) and the receipt of any Cash Component, the Custodian will notify the Distributor and the Adviser. The Fund will issue Creation Units of Shares and the Custodian will deliver the Shares to the Authorized Participants through DTC. DTC will then credit the Authorized Participant's DTC account. The clearance and settlement of redemption transactions essentially reverses the process

James A. Brigaliano  
Paula R. Jenson  
April 3, 2008  
Page 22

described above. After a Fund has received a redemption request in proper form and the Authorized Participant transfers Creation Units to the Custodian through DTC, the Fund will cause the Custodian to initiate procedures to transfer the requisite Fund Securities and any Cash Redemption Amount. On T + 3, assuming the Custodian has verified receipt of the Creation Units, the Custodian will transfer Fund Securities that are corporate and non-corporate bonds (other than U.S. government securities) to the Authorized Participant through DTC and Fund Securities that are U.S. government securities, together with any Cash Redemption Amount through the Federal Reserve System.

Shares of the PowerShares Active Low Duration Fund will be debited or credited by the Custodian directly to the DTC accounts of the Authorized Participants.

#### **Depository Trust Corporation**

DTC serves as securities depository for the Shares. (The Shares may be held only in book-entry form; stock certificates will not be issued.) DTC, or its nominee, is the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or its participants (i.e., securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations), some of whom (and/or their representatives) own DTC. Beneficial owners of Shares are not entitled to have Shares registered in their names, and will not receive or be entitled to receive physical delivery of certificates.

Accordingly, to exercise any rights of a holder of Shares, each beneficial owner must rely on the procedures of (i) DTC; (ii) DTC Participants; and (iii) brokers, dealers, banks and trust companies

James A. Brigaliano  
Paula R. Jenson  
April 3, 2008  
Page 23

that clear through or maintain a custodial relationship with a DTC Participant, either directly or indirectly, through which such beneficial owner holds its interests.

### **Calculation of Intra Day NAV**

The Exchange will disseminate every 15 seconds throughout the trading day through the facilities of the Consolidated Tape Association an amount representing on a per Share basis, the sum of the current value of the Deposit Securities and the estimated cash component. The Trust is not involved in or responsible for the calculation or dissemination of any such amount and makes no warranty as to its accuracy.

### **The Trading Market**

The Shares will be listed and traded on the Exchange. Shares will be freely tradable on the Exchange throughout the trading session. The price of Shares trading on the Exchange will be based on a current bid/offer market. The trading market on the Exchange affords investors the opportunity to assume and liquidate positions in Shares at their discretion, permitting them to take advantage of prices at any time during the trading day. This combination of intra-day liquidity with the Creation Unit purchase and redemption features creates potential arbitrage opportunities that, in turn, should mitigate pricing inefficiencies. Historically, this process has been proven to establish efficient pricing with other ETFs. The high degree of historical and expected correlation of NAV and share prices contrasts with the case of shares of closed-end equity funds which, not having the ability to create and redeem at the fund level, typically trade at a material discount (and occasionally at a premium) to their underlying net asset values.

James A. Brigaliano  
Paula R. Jenson  
April 3, 2008  
Page 24

We believe that the Funds will not present any new issues with respect to the exemptions which allow for current index-based ETFs to redeem their shares only in Creation Units. While we recognize that the potential for more significant deviations between a security's bid/ask price average and NAV exists with actively managed ETFs, that is not the case here, since each Fund's portfolio holdings will be fully transparent. As noted previously, on each Business Day before commencement of trading in shares on the Exchange, each Fund will disclose on its website the identities and quantities of the Portfolio Securities and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day. The website and information will be publicly available at no charge. Under accounting procedures followed by the Funds, trades made on the prior Business Day ("T") will be booked and reflected in NAV on the current Business Day ("T + 1"). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the Portfolio Securities and other assets that will form the basis for the NAV calculation at the end of the Business Day. Since market participants will be aware at all times of each Fund's Portfolio Securities and other assets held by the Fund that will form the basis for the Fund's NAV calculation, the risk of significant deviation between NAV and market price is similar to that which exists in the case of index-based ETFs.

#### **Rule 101 of Regulation M**

Subject to certain enumerated exceptions, Rule 101 of Regulation M prohibits a "distribution participant," in connection with a distribution of securities, from bidding for or purchasing or from attempting to induce any person to bid for or purchase, a "covered security" during the applicable restricted period. "Distribution participant" is defined in Rule 100(b) to include an underwriter or

James A. Brigaliano  
Paula R. Jenson  
April 3, 2008  
Page 25

prospective underwriter in a particular distribution of securities, or any broker, dealer or other person who has agreed to participate or is participating in such distribution. We note that Rule 100(b) of Regulation M defines "distribution" for purposes of such Rule as an offering of securities, whether or not subject to registration under the Securities Act of 1933, as amended, that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods.

We understand that while broker-dealers that tender Deposit Securities to the Trust through the Distributor in return for Creation Unit(s) of Shares generally will not be part of a syndicate or selling group, and no broker-dealer will receive fees, commissions or other remuneration from the Trust or the Distributor for the sale of Creation Units, under certain circumstances they could be deemed to be an "underwriter" or "distribution participant" as those terms are defined in Rule 100(b).

The Trust respectfully requests that the Commission or Staff grant exemptive, interpretive or no-action relief from Rule 101, as discussed below, to permit persons participating in a distribution of Shares to bid for or purchase, or engage in other secondary market transactions in, such Shares during their participation in such distribution.

Paragraph (c)(4) of Rule 101 exempts from its application, *inter alia*, redeemable securities issued by an open-end management investment company (as such terms are used in the 1940 Act). The Trust is registered as an open-end management investment company under the 1940 Act. However, the individual Shares are not redeemable except in Creation Unit size aggregations. Due to the redeemability of the Shares in Creation Unit size aggregations, there should be little disparity

James A. Brigaliano  
Paula R. Jenson  
April 3, 2008  
Page 26

between the Shares' market price and their NAV per Share. Accordingly, the rationale for exempting redeemable securities of open-end management investment companies from the application of Rule 101 is equally applicable to the Shares. Although redemption is subject to the minimum condition of tendering 50,000 Shares (i.e., a Creation Unit) the Trust is intended to function like any other open-end fund continuously offering its shares. It is in recognition of the special nature of such offerings that open-end management investment company and unit investment company securities are exempted under paragraph (c)(4). Without such an exemption, they could not operate as intended. In view of the foregoing, the Trust requests that the Staff confirm that as a result of registration of the Trust as an open-end management investment company and the redeemable nature of the Shares in Creation Unit Size aggregations, transactions in the Shares would be exempted from Rule 101 on the basis of the exception contained in paragraph (c)(4) of such Rule.

The purpose of Rule 101 is to prevent persons from conditioning the market to facilitate a distribution. Creation Unit size aggregations of Shares may be created, and Shares in Creation Unit size aggregations may be redeemed in-kind at NAV, on any Business Day. Holders of Shares also have the benefit of intra-day secondary market liquidity by virtue of the Exchange listing. Thus, the secondary market price of Shares should not vary substantially from the NAV of Shares of the relevant Fund. Because of the redeemability of Shares in Creation Unit size aggregations, coupled with the open-ended nature of the Fund, any significant disparity between the market price of the Shares and NAV should be eliminated by arbitrage activity. Because their NAV is largely determined based on the market value of the Portfolio Securities, neither the creation nor redemption of Shares,

James A. Brigaliano  
Paula R. Jenson  
April 3, 2008  
Page 27

nor purchases or sales of Shares in the secondary market, will impact the NAV, and such transactions should not have a significant impact on the market value of Shares.

The Trust also respectfully requests relief from the provisions of Rule 101 to the extent necessary to permit persons or entities that may be deemed to be participating in the distribution of the Shares or a Portfolio Security of the Fund to tender Shares for redemption in Creation Unit size aggregations and to receive as part of redemption proceeds the Fund Securities of the Fund.

The Trust requests, in this regard, that the Staff confirm that the tender of the Shares to the Trust for redemption and the receipt of Fund Securities upon redemption does not constitute a bid for or purchase of any of such securities for the purposes of Rule 101, or alternatively, that the Commission or Staff grant exemptive or no-action relief to the extent necessary to permit redemptions of Shares for Fund Securities as described above. Redemption entails no separate bid for any of the Fund Securities. Absent unusual circumstances, the Trust will not purchase Fund Securities in the secondary market to fulfill a redemption request. Therefore, redemptions of Shares cannot be expected to affect the market price of the Fund Securities. The Trust believes that the purchase of Fund Securities, while engaged in a distribution with respect to such stock, for the purpose of acquiring a Creation Unit Aggregation of Shares should be exempted from Rule 101. The purpose of Rule 101 is to prevent persons from conditioning the market to facilitate a distribution. Application of Rule 101 in this context would not further the anti-manipulative purposes underlying the Rule.

In view of the lack of any special financial incentive to create Creation Units, combined with a predictable lack of any meaningful potential for the issuance and the secondary market trading of the

James A. Brigaliano  
Paula R. Jenson  
April 3, 2008  
Page 28

Shares to affect significantly Share pricing, application of Rule 101 to a broker-dealer or other person who may be participating in a distribution or broker-dealers or other persons in their creation and redemption activities, in their day-to-day ordinary business of buying and selling securities and the Shares, may undermine the potential beneficial market effect of Share trading.

**Rule 102 of Regulation M**

The Trust also requests that the Commission confirm that as a result of registration of the Trust as an open-end management investment company and the redeemable nature of the Shares in Creation Unit size aggregations that, for the reasons previously stated under our request with respect to the exemption under Rule 101(c)(4), transactions in the Shares would be exempted from Rule 102 on the basis of the exception contained in paragraph (d)(4) of such Rule.

Alternatively, the Trust respectfully requests that the Commission grant an exemption under paragraph (e) of Rule 102 to such effect. Application of Rule 102 in this context would not further the anti-manipulative purposes underlying the Rule.

The purpose of Rule 102 is to prevent persons from manipulating the price of a security during a distribution and to protect the integrity of the offering process by prohibiting activities that could artificially influence the market for that particular security. For the reasons described in connection with the requested Rule 101 relief, redemption transactions and secondary market transactions in the Shares are not viable means to manipulate the price of a security in a Fund's portfolio during a distribution of such security. The Trust will redeem the Creation Unit size aggregations of Shares at the NAV of the Shares. Although the Shares will be traded on the secondary

James A. Brigaliano  
Paula R. Jenson  
April 3, 2008  
Page 29

market, the Shares may only be redeemed in Creation Unit size aggregations. Thus, the Trust believes that the redemption by the Trust of the Shares at NAV in consideration principally for Fund Securities does not involve the abuses that Rule 102 was intended to prevent.

**Rule 10b-10**

Rule 10b-10 requires a broker or dealer effecting a transaction in a security for a customer to give or send written notification to such customer disclosing the information specified in paragraph (a) of Rule 10b-10, including the identity, price and number of shares or units (or principal amount) of the security purchased or sold. The Trust respectfully requests that the Commission provide exemptive relief from application of the Rule, as discussed below, with respect to the creation (i.e. issuance) or redemption of Shares (all of which are in Creation Unit size aggregations). The Trust is not requesting exemptive or interpretive relief from Rule 10b-10 in connection with purchases and sales of Shares in the secondary market.

The Fund proposes that broker-dealers acting for their customers in either depositing Deposit Securities in exchange for Creation Units or redeeming Shares in Creation Unit size aggregations for Fund Securities be permitted to provide such customers with a statement of the number of Creation Units created or redeemed without providing a statement of the identity, number and price of shares of individual Deposit Securities included in the Fund Deposit tendered to the Trust for purposes of creation of Creation Units, or the identity, number and price of shares of Fund Securities to be delivered by the Trust to the redeeming holder. The composition of the Deposit Securities required to be tendered to the Trust through the Custodian for creation purposes and of the Fund Securities to be

James A. Brigaliano  
Paula R. Jenson  
April 3, 2008  
Page 30

delivered on redemption will be disseminated by the Custodian on each Business Day and will be applicable to requests for creations or redemption, as the case may be, on that day. This information will be publicly available at the Exchange and will be made available to requesting broker-dealers or other persons through the NSCC. Moreover, institutions and market professionals will be readily able to calculate independently such information based on publicly available information. The Trust anticipates that any institution or broker-dealer engaging in creation or redemption transactions would have done so only with knowledge of the composition of the applicable Deposit Securities or the Fund Securities to be received on redemption, so that specific information on the Deposit Securities or the Fund Securities to be received on redemption in the Rule 10b-10 notification would be redundant.

The Trust agrees that any exemptive or interpretive relief under Rule 10b-10 with respect to creations and redemptions be subject to the following conditions:

(1) Confirmation statements of creation and redemption transactions in Shares will contain all of the information specified in paragraph (a) of Rule 10b-10 other than identity, price, and number of shares of each Component Stock of the Deposit Securities or Fund Securities tendered or received by the customer in the transaction;

(2) Any confirmation statement of a creation or redemption transaction in Shares that omits the identity, price, or number of shares of Component Stocks will contain a statement that such omitted information will be provided to the customer upon request; and

(3) All such requests will be fulfilled in a timely manner in accordance with paragraph (c) of Rule 10b-10.

**Rule 10b-17**

Rule 10b-17 requires an issuer of a class of publicly traded securities to give notice of certain specified actions (e.g., dividends, stock splits, rights offerings) relating to such class of securities in accordance with Rule 10b-17(b). Paragraph (c) of the Rule, however, states that the Rule shall not apply to redeemable securities issued by open-end investment companies and unit investment trusts registered under the 1940 Act.<sup>10</sup> Except for the fact that redemption is subject to the minimum condition of tendering 50,000 Shares, the Trust is intended to function like any other open-end fund continuously offering its shares.<sup>11</sup> In addition, compliance with Rule 10b-17 would be impractical in light of the nature of the Funds. This is because it is not possible for the Trust to accurately project ten days in advance what dividend, if any, would be paid on a particular record date. It is in recognition of the foregoing, that the Division of Investment Management issued an order permitting the Trust to issue shares with limited redeemability while still treating the Trust like any other open-end investment company. Therefore, the exemption under paragraph (c) of Rule 10b-17, which covers open-end investment companies with fully redeemable shares, should be applicable to the Trust.

**Section 11(d)(1): Rule 11d1-2**

Section 11(d)(1) of the Exchange Act generally prohibits a person who is a broker-dealer from effecting any transaction in which the broker-dealer extends credit to a customer on any security

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<sup>10</sup> See *supra* note 2.

<sup>11</sup> See *supra* note 2.

James A. Brigaliano  
Paula R. Jenson  
April 3, 2008  
Page 32

which was part of a new issue in the distribution of which it participated as a member of a selling syndicate or group within thirty days prior to such transaction. Rule 11d1-2 provides an exemption from Section 11(d)(1) for securities issued by a registered open-end investment company or unit investment trust with respect to transactions by a broker-dealer who extends credit on such security, provided the person to whom credit has been extended has owned the security for more than thirty days.

The Staff has previously issued class relief under Section 11(d)(1) and Rule 11d1-2 with respect to ETFs which meet certain conditions (the "SIA Letter").<sup>12</sup> The Trust requests that similar relief be extended to the Trust subject to the identical conditions enumerated in the SIA Letter. Under the conditions of the SIA Letter, the only compensation a broker-dealer will receive for representing a customer in purchasing Shares is the commission charged to that customer, which in all likelihood is the same compensation the broker-dealer would receive in connection with any stock purchase by a customer. Therefore, there is no special financial incentive to a broker-dealer, except the broker-dealer's regular commission, to engage in secondary market transactions in Shares, whether as principal or agent. In view of the foregoing, the Trust does not believe that application of the thirty-day restriction in Rule 11d1-2 to broker-dealers furthers the purpose of Section 11(d)(1) or Rule 11d1-2.

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<sup>12</sup> See SIA Letter *supra* note 1.

James A. Brigaliano  
Paula R. Jenson  
April 3, 2008  
Page 33

**Rule 14e-5**

Rule 14e-5 prohibits a person who makes a cash tender offer or exchange offer for any equity security from directly or indirectly purchasing such security (or a security immediately convertible into or exchangeable for such security) otherwise than pursuant to such tender offer or exchange offer. The Rule also applies to the dealer-manager of a tender or exchange offer, its affiliates and to advisers thereto ("Covered Persons").

The Trust respectfully requests that the Commission grant an exemption from Rule 14e-5 to permit any Covered Person (including a member or member organization of the Exchange or other Market), during the existence of such offer, to (1) redeem Shares in Creation Unit size aggregations for the Fund Securities that may include a security subject to the tender or exchange offer; and (2) engage in secondary market transactions in Shares during such offer.

The acquisition of individual Fund Securities by means of redemptions of Shares would be impractical and extremely inefficient in view of the requirement that a minimum of 50,000 Shares be redeemed. In addition, as discussed in the relief requested under Regulation M, application of the Rule's prohibition would impede the valid and useful market and arbitrage activity which would assist secondary market trading and improve Share pricing efficiency. In no case would redemptions of Shares or secondary market transactions by Covered Persons be effected for the purpose of facilitating a tender offer. Accordingly, purchases and redemptions of Shares in the circumstances described would not appear to result in the abuses at which Rule 14e-5 is directed.

James A. Brigaliano  
Paula R. Jenson  
April 3, 2008  
Page 34

In addition, the Trust respectfully requests that the Staff take a no-action position under Rule 14e-5 if a broker-dealer (including a member or member organization of the Exchange) acting as a dealer-manager of a tender offer for a Fund Security purchases such securities in the secondary market for the purpose of tendering such securities to purchase one or more Creation Unit Aggregations of Shares, if made in conformance with the following: (i) such bids or purchases are effected in the ordinary course of business, in connection with a basket of 20 or more securities in which any security that is the subject of a distribution, or any reference security, does not comprise more than 5% of the value of the basket purchased; or (ii) purchases are effected as adjustments to such basket in the ordinary course of business as a result of a change in the composition of a Fund's portfolio; and (iii) such bids or purchases are not effected for the purpose of facilitating such tender offer.

**Rules 15c1-5 and 15c1-6**

Rule 15c1-5 requires a broker or dealer controlled by, controlling, or under common control with, the issuer of a security who induces the purchase or sale by a customer of a security, to disclose the existence of such control before entering into a contract with or for such customer for the purchase or sale of such security. Rule 15c1-6 requires a broker or dealer to send a customer written notification of its participation in the primary or secondary distribution of any security in which it effects any transaction in or for such customer's account or induces the purchase or sale of such security by such customer.

For the reasons discussed above, the Trust believes that disclosure by a broker-dealer of a control relationship with the issuer of a portfolio security held by the Fund, or of a participation in the

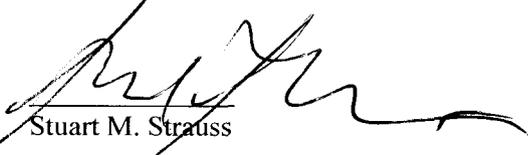
James A. Brigaliano  
Paula R. Jenson  
April 3, 2008  
Page 35

distribution of one of the Portfolio Securities, would impose an unnecessary and unjustifiable burden on broker-dealers engaging in Share transactions for their customers. There is no realistic potential for manipulating one of the Portfolio Securities' market price by means of transactions in Shares. Such a strategy would be both expensive and inefficient and, moreover, the Fund will not own more than 10% of any one company's voting securities. Application of the Rules 15c1-5 and Rule 15c1-16 could adversely affect the attractiveness of the Shares to broker-dealers and thereby affect market liquidity and the utility of the Shares as a form of basket trading. The Trust, therefore, respectfully requests the Staff to grant no-action relief from application of the rules with respect to creations and redemptions of Shares and secondary market transactions therein.

**Conclusion**

Based on the foregoing, we respectfully request that the Commission and the Staff grant the relief requested herein. The forms of relief requested are similar to those actions that the Commission and the Staff have taken in similar circumstances. If the Commission or the Staff believes that a different format is not appropriate (for example, a no-action position rather than an exemption), we would appreciate the opportunity to revise this request for relief accordingly. Should you have any questions please call me at (212) 878-4931.

Sincerely,



Stuart M. Strauss

cc: Joan Collopy  
Matt Daigler